

OPINIONS OF INDIVIDUAL JUSTICES IN CHAMBERS

GREGG *v.* GEORGIA

ON APPLICATION FOR STAY OF MANDATE

No. A-31 (74-6257). Decided July 22, 1976*

Application for stay of mandate is granted pending disposition of a petition for rehearing, since, if executions were carried out before that petition could be acted on, petitioners would be irreparably harmed and cases would be moot, and since granting of stay will not prejudice respondent States' interests.

MR. JUSTICE POWELL, Circuit Justice.

The petitioners in these cases have filed with the Court a consolidated petition for rehearing, and also have presented to me as Circuit Justice for the Fifth Circuit an application for a stay of the mandate heretofore scheduled to issue on July 27, the stay to be effective pending the disposition of the consolidated petition for rehearing. Under controlling statutes, such petition cannot be acted upon except by the full Court in regular or special session. If the executions in these cases were carried out before the petition for rehearing could be acted on by the Court, the harm to petitioners obviously would be irreparable. In addition, the cases would then be moot. Nor is there reason to believe that the granting of a stay until the petition for rehearing can be duly considered will prejudice the interests of the respondent States. In these circumstances, I conclude that the issuance of the mandate in each of these cases should be, and hereby is, stayed until further order of this Court.

The decision to grant this stay is not suggestive of my position on the merits of the petition.

*Together with Nos. A-31 (75-5706), *Proffitt v. Florida*, and A-31 (75-5394), *Jurek v. Texas*.